

AMENDMENTS TO LB775

Introduced by Judiciary

1           1. Insert the following new sections:

2           Sec. 5. Section 30-2201, Revised Statutes Cumulative  
3 Supplement, 2012, is amended to read:

4           30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,  
5 and 30-4001 to 30-4045 and section 6 of this act shall be known and  
6 may be cited as the Nebraska Probate Code.

7           Sec. 6. (1) For purposes of this section:

8           (a) Custodian means a bank, savings and loan association,  
9 credit union, or other institution acting as a lessor of a safe  
10 deposit box; and

11           (b) Representative of a custodian means an authorized  
12 officer or employee of a custodian.

13           (2) (a) If a decedent at the time of his or her death  
14 was a sole or last surviving joint lessee of a safe deposit box,  
15 the custodian shall, prior to notice that a personal representative  
16 or special administrator has been appointed for such decedent's  
17 estate, allow access to the safe deposit box to determine whether  
18 the safe deposit box contains an instrument that appears to be an  
19 original will of the decedent, a deed to a burial plot, or burial  
20 instructions. The following persons may have such access:

21           (i) A person who presents an affidavit described in  
22 subsection (4) of this section that affiant reasonably believes  
23 that he or she is either (A) an heir at law of the decedent,

1 (B) a devisee of the decedent or a person nominated as a personal  
2 representative as shown in a photocopy of a will which is attached  
3 to such affidavit, or (C) the agent or attorney specifically  
4 authorized in writing by a person described in subdivision  
5 (2) (a) (i) (A) or (B) of this section; or

6 (ii) A person who, under the terms of the safe deposit  
7 box lease or a power of attorney at the time of the decedent's  
8 death, was legally permitted to enter the safe deposit box, unless  
9 otherwise provided by the lease or the power of attorney.

10 (b) If a person described in subdivision (2) (a) of this  
11 section desires access to a safe deposit box but does not possess  
12 a key to the box, the custodian may open the safe deposit box  
13 by any means necessary at the person's request and expense or the  
14 custodian may require the person to obtain a court order for the  
15 custodian to open the safe deposit box at the requesting person's  
16 expense. The custodian shall retain, in a secure location at such  
17 person's expense, the contents of the box other than a purported  
18 will, deed to a burial plot, and burial instructions. A custodian  
19 shall deliver a purported will as described in subdivision (5) (b)  
20 of this section. A person described in subdivision (2) (a) (i) of  
21 this section may remove a deed to a burial plot and burial  
22 instructions that are not part of a purported will pursuant to  
23 subdivision (5) (d) of this section, and the custodian shall not  
24 prevent the removal. Expenses incurred by a custodian or by the  
25 person seeking the documents pursuant to this section shall be  
26 considered an estate administration expense.

27 (3) A representative of the custodian shall be present

1 during the entry of a safe deposit box pursuant to this section.

2 (4) The affidavit referred to in subdivision (2) (a) (i) of  
3 this section shall state:

4 (a) That the sole or last surviving lessor of a safe  
5 deposit box has died and the date of his or her death, and a copy  
6 of the death certificate shall be attached;

7 (b) If the person submitting the affidavit is an attorney  
8 or agent of the affiant, that such appointment is for the purpose  
9 of accompanying the opening of the safe deposit box. In lieu of  
10 this statement, the appointment shall accompany the affidavit; and

11 (c) That the affiant:

12 (i) (A) Is an heir at law of the deceased lessor and a  
13 description of such person's relationship to the deceased lessor;

14 (B) Is reasonably thought to be a devisee of the decedent  
15 based on the provisions of a will, a photocopy of which is  
16 submitted with the affidavit; or

17 (C) Is reasonably thought to be nominated as personal  
18 representative pursuant to the terms of a will, a photocopy of  
19 which is submitted with the affidavit;

20 (ii) Swears or affirms that all statements in the  
21 affidavit are true and material and further acknowledges that  
22 any false statement may subject the person to penalties relating to  
23 perjury under section 28-915; and

24 (iii) Has no knowledge of an application or petition for  
25 the appointment of a personal representative pending or granted in  
26 any jurisdiction.

27 (5) (a) If an instrument purporting to be a will is found

1 in a safe deposit box as the result of an entry pursuant to  
2 subsection (2) of this section, the representative of the custodian  
3 shall remove the purported will.

4 (b) The custodian shall mail the purported will by  
5 registered or certified mail or deliver the purported will in  
6 person to the clerk of the county court of the county in which the  
7 decedent was a resident. If the custodian is unable to determine  
8 the county of residence of the decedent, the custodian shall mail  
9 the purported will by registered or certified mail or deliver the  
10 purported will in person to the office of the clerk of the county  
11 court of the county in which the safe deposit box is located.

12 (c) At the request of the person or persons authorized  
13 to have access to the safe deposit box under subsection (2) of  
14 this section, the representative of the custodian shall copy each  
15 purported will of the decedent, at the expense of the requesting  
16 person, and shall deliver the copy of each purported will to the  
17 person, or if directed by the person, to the person's agent or  
18 attorney. In copying any purported will, the representative of the  
19 custodian shall not remove any staples or other fastening devices  
20 or disassemble the purported will in any way.

21 (d) If the safe deposit box contains a deed to a burial  
22 plot or burial instructions that are not a part of a purported  
23 will, the person or persons authorized to have access to the safe  
24 deposit box under subsection (2) of this section may remove these  
25 instruments or request that the representative of the custodian  
26 copy the deed to the burial plot or burial instructions at the  
27 expense of the requesting person.

1           (6) This section does not limit the right of a personal  
2 representative or a special administrator for the decedent, or a  
3 successor of the decedent pursuant to section 30-24,125, to have  
4 access to the safe deposit box as otherwise provided by law.

5           (7) Unless limited by the safe deposit box lease, a  
6 surviving co-lessee of the safe deposit box may continue to enter  
7 the safe deposit box notwithstanding the death of the decedent.

8           (8) A custodian shall not be liable to a person for an  
9 action taken pursuant to this section or for a failure to act in  
10 accordance with the requirements of this section unless the action  
11 or failure to act is shown to have resulted from the custodian's  
12 bad faith, gross negligence, or intentional misconduct.

13           Sec. 7. The Revisor of Statutes shall assign section 6 of  
14 this act within Chapter 30, article 24, part 1.

15           2. On page 7, line 4, strike "or 30-24,127".

16           3. Renumber the remaining section and correct the  
17 repealer accordingly.